

Appln. No. 09/616,516
Amdt. dated July 29, 2003
Reply to Office Action of March 12, 2003

REMARKS

Reexamination of the above-identified application is respectfully requested.

STATUS OF THE CLAIMS

Claims 1-19 are pending in the application.

Claims 1-3, 5-6, 11, 13, and 17 have been amended.

Claims 16-19 have been withdrawn from further consideration.

The Office Action

The restriction requirement has been maintained.

Claims 1, 3-7, 9, 11, 13, and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by Gutzmann, et al. (U.S. Patent No. 6,183,807).

Claim 8 stands rejected under 35 U.S.C §103(a) as being unpatentable over Gutzmann.

Claims 2, 12, and 14 stand rejected under 35 U.S.C §103(a) as being unpatentable over Gutzmann, et al. in view of Kurschner, et al. (WO 95/10191).

Claim 10 stands rejected under 35 U.S.C §103(a) as being unpatentable over Gutzmann, et al. in view of Merk, et al. (U.S. Patent No. 6,387,238).

Claims 1, 6, and 9-11 stand rejected under 35 U.S.C §103(a) as being unpatentable over Merk, et al. (U.S. Patent No. 6,387,238).

Claims 2 and 12 stand rejected under 35 U.S.C §103(a) as being unpatentable over Merk, et al. in view of Kurschner, et al.

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Claims 3, 13, and 15 stand rejected under 35 U.S.C §103(a) as being unpatentable over Merk, et al. in view of Gutzmann, et al.

Claim 14 stands rejected under 35 U.S.C §103(a) as being unpatentable over Merk, et al. in view of Gutzmann, et al. and further in view of Kurschner, et al.

The References of Record

US Patent No. 6,183, 807 to Gutzmann, et al. is not properly a reference against claims 1-4 and 6-15 of the present application, as currently amended. The present application claims the priority of a US Provisional Application, which was filed on July 14, 1999. The Gutzmann '807 patent is a divisional of an application filed on August 3, 1999, which is **after** the priority date of the present application. Although the Gutzmann '807 patent also claims the priority as a Continuation-In-Part of an application filled on August 20, 1998 (now US 6,010,729), that application makes no mention of treating **cooked food products**, such as sausages. Rather, the Gutzmann '729 patent is concerned with decontaminating carcasses. Cooked food products are very different from carcasses since it is conventionally expected that the cooking process kills any bacteria or other microorganisms both on and within the meat. Thus, it would not be obvious, based on the Gutzmann '729 patent, to use peracetic acid to treat cooked food products.

The **Merk, et al. patent** is not properly a reference against the claims of the present application. The Merk patent was filed on August 2, 2000, claiming the priority of a provisional application, filed on August 9, 1999. Both of these dates are **after** the priority date of the present application (July 14, 1999). Applicants have reviewed the

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disclosure of the provisional application from which the present application claims priority and have confirmed that it discloses those elements asserted to be shown by Merk. Accordingly, it is respectfully requested that Merk be removed as a reference.

WO 95/10191 to Kurschner discloses a method for sanitizing fresh fowl by dipping or spraying the carcasses.

The Claims Distinguish Over the References
of Record

Claim 1 has been amended to call for a method which includes cooking sausages in casings, removing the sausages from the casings, and contacting an exterior of the decased sausages with a decontaminant solution containing an antimicrobial agent which includes peracetic acid for a sufficient time to microbially decontaminate the exterior of the decased sausages.

Support for the amendments to claim 1 is to be found in claim 11, as originally filed, and in the specification at page 5, lines 14-26. (See also provisional application at page 4, line 32 to page 5, line 7).

None of the references disclose or suggest such a method. As discussed above, the Gutzmann '729 patent, from which the Gutzmann '807 patent claims priority, makes no mention of decontamination of cooked food products, such as sausages. The filing dates of Gutzmann '807, and the '963 divisional from which it claims priority, are after the presently claimed priority date. Thus, the Gutzmann '807 patent cannot be asserted as showing treatment of cooked food products.

Similarly Kurschner is dealing with raw meat, not cooked food products.

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As noted above, the Merk priority date is after the priority date of the present application and is not properly a reference. The Merk reference is also owned by the present assignees and thus cannot be seen as an indication that it would be obvious for others to develop the present invention at the time the present priority application was filed.

The present applicants have found that cooked food products, such as sausages, can become recontaminated with airborne microorganisms during processing. When the contaminants are sealed into the package, they can multiply, leading to hazardous levels of microorganisms, such as *Listeria*, in some cases.

The applicants have found that by treating the peeled sausages with peracetic acid between the cooking and packaging steps, the sausages enter the package free of airborne contaminants and the chances of severe *Listeria* outbreaks are substantially reduced.

Accordingly, it is submitted that claim 1, and claims 2-4 and 6-12 dependent therefrom, distinguish patentably and unobviously over the references of record.

Claim 5 has been placed in independent form and now calls for a method of treating a food product which includes spraying an exterior of the food product with a decontaminant solution containing an antimicrobial agent which includes peracetic acid for a sufficient time to microbially decontaminate the exterior of the food product, the peracetic acid concentration being from about 1000 to about 2000 ppm.

The references of record do not disclose or fairly suggest such a method. Gutzmann '729 uses much lower peracetic acid concentrations. Specifically Gutzmann uses only 10 to about 500 ppm peracetic acid. Further, neither

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Kurschner nor Gutzmann makes any suggestion of recirculating sprayed peracetic acid solution. The Examiner cites Merk as disclosing recirculation. However, as discussed above, Merk is not properly a reference against the present application.

The present applicants have found that at relatively high levels of peracetic acid, a conveyor system can be used in which the food products are sprayed as they pass through.

Accordingly, it is submitted that claim 5 distinguishes patentably and unobviously over the references of record.

Claim 13 has been amended and now calls for a method of treating a cooked food product. The method includes spraying the cooked food product with a solution comprising peracetic acid in a first chamber and drying the cooked food product in a second chamber.

Support for the amendments to claim 13 are to be found in the specification at page 5, lines 14-26. (See also provisional application at page 4, line 32 to page 5, line 7).

The references of record do not disclose the presently claimed method. **Merk**, as discussed above, is not a reference against the presently claimed method, due to its later priority date.

The Gutzmann '729 patent makes no mention of treating **cooked food products**. Rather, the Gutzmann '729 patent is concerned with decontaminating carcasses. Thus, the Gutzmann '807 patent is not properly a reference in this respect. Cooked food products are very different from carcasses since it is conventionally expected that the cooking process kills any bacteria or other microorganisms both on and within the food product.

Kurschner is also concerned with treatment of fresh animal carcasses, and makes no mention of treating cooked food products or of drying them after treatment.

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Accordingly, it is submitted that claim 13, and claims 14-15 dependent therefrom, distinguish patentably and unobviously over the references of record.

CONCLUSION

For the reasons set forth above, it is submitted that claims 1-18 distinguish patentably over the reference of record. An early allowance of these claims is earnestly solicited.

Respectfully submitted,

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29 July 2003
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